

VITAL OPINION ON HARBOR QUESTION BY FORMER CITY ATTORNEY MARR; CITY NOT HELD FOR DAMAGES

STATE HAS RIGHT TO MAKE HARBOR LINES AND CAN DELEGATE POWER TO CITY

In Concise Statement of the Law Rendered to Arthur Jelliffe, President of the Connecticut Oysterman's Protective Association, Former Re- publican City Attorney Marr Declares That City Line Does Not Condemn Naugatuck Dock, and That City Need Not Pay Railroad Damages for Taking Flats.

The Farmer's exposure last night, of the effort to insert into the proposed charter amendments a clause which would, if it should be assented to by the General Assembly, compel the city to pay damages to the New York, New Haven and Hartford Railroad company, apparently caused the withdrawal at least temporarily of the amendment.

It did not appear in the batch of changes offered to the Council, last night.

Mayor Lee assigned as a reason for its non-appearance that it had been found to contain a clerical error which would be rectified.

In the meantime light is thrown upon the true nature of this most audacious effort to "put the city into a hole," by the opinion of former City Attorney James A. Marr, which is presented today for the attention of all thoughtful citizens who have the interest of the municipality at heart, and who believe that it is the duty of those entrusted with the administration of city affairs, to put the welfare of the city first.

Mr. Marr's opinion was not written for effect. It is not a political opinion. It is a statement given to a client by his lawyer upon the request of the client for an opinion upon the law, whatever the law might be. The opinion was not prepared after the trap amendment was drawn, but several days before. The trap amendment was not made public until yesterday afternoon. The opinion was rendered Jan. 22.

Mr. Arthur Jelliffe, to whom the opinion was rendered, is president of the Connecticut Oysterman's Protective Association. He has headed the association fight to preserve the anchorage basin for the use of vessels engaged in the oyster trade. He appeared at the harbor line hearing, which was held by the Common Council, in favor of the retention of the city line.

There he listened to statements, made by various gentlemen, that the city would be required to pay large damages if it retained the city line. He also listened to statements that the contrary was true, that the city has the right to lay the harbor line for the benefit of navigation without paying sums to owners of the upland.

He desired to know exactly what the law was, and so sought Mr. Marr, receiving the first authoritative statement of the law, in an absolutely conclusive and convincing form.

Mr. Marr finds that the State has authority to establish the harbor line without compensation to anybody, to protect navigation.

He finds that the State has delegated this right to the city of Bridgeport.

He finds that the old charter required the city to pay for the wharfage rights that it might take.

He finds that the new charter is changed in such a way that in his opinion the city is not required to pay damages.

The amendment which was exposed in the Farmer yesterday, seeks to restore the charter to its former state, and to put the city in a place where it must pay money to the railroad company.

Mr. Marr's opinion wipes away all claim that by the establishment of the city line, damages will have to be paid for the Naugatuck dock.

His logical explanation of the law sweeps away the entire mass of misinformation that has maliciously or ignorantly been assembled about this point.

The city line by merely crossing the Naugatuck dock would not "take" it. Therefore no damages would have to be paid.

But where it crosses the dock the city line is absolutely co-incident with the government line. The government line was established first. If the establishment of a harbor line "takes" the dock that fact is accomplished by the government line. The city does not "take" it again.

Mr. Marr has, in the course of performing his professional duty to a client, done the city a signal service. Indeed his service is probably greater in this instance than when as City Attorney he discovered the "little joker" in the eminent domain clause, and forced into the city charter a section which enables the city to take back, when the proper occasion arises, some of the valuable water front that has passed out of its hands.

MR. MARR'S CONCLUSIVE OPINION.

To Arthur Jelliffe,

President Connecticut Oysterman's Protective Association:—

In response to your inquiries for an opinion on the matters herein discussed, I submit to you and your association the following:

In reference to your first question as to the power of the State of Connecticut to establish harbor lines within the navigable waters of the city of Bridgeport and in Bridgeport harbor, and whether or not the State can delegate such power to the city of Bridgeport, I would say that there is no doubt but that the State of Connecticut has such power both to establish harbor lines, within the harbor of the city of Bridgeport, and also to delegate said power to said city.

In reference to your second question, as to whether or not the State of Connecticut, in establishing harbor lines in said Bridgeport, would be bound to compensate the adjoining owners of mud flats, which are under the tide water in said harbor, the law seems to be as follows:

The case of Lane vs. The Board of Harbor Commissioners for New Haven, in the 70th Connecticut, at page 685, and also in the 71st Conn. page 65, lays down the law for this State and appears to be squarely in point.

In this case, one Lane was an owner of the adjoining upland upon certain navigable water in New Haven harbor. The channel was some four or five hundred feet from the shore in front of Lane's property. The State of Connecticut had delegated to certain commissioners of New Haven the right to establish harbor lines, etc., in the interests of navigation, in said harbor. These commissioners had previously given the said Lane a permit to wharf out to the channel. The said Lane, because of his claimed ownership in the mud flats in front of his uplands, had planted an oyster bed. Sometime after Lane had secured said permit and had planted said oyster bed, said harbor commissioners, using one George H. Smith as their agent and who likewise had permission from the United States Government, constructed a channel considerably nearer the shore than the old channel, and through said oyster bed of Lane's without compensation therefor and without giving any notice to said Lane. Lane sued in our courts, claiming that neither the State of Connecticut nor the Federal Government could take his oyster bed or his wharfing right from him without compensation, and, likewise, that they could not prevent him from wharfing out to the old channel without first condemning this property right; and he further claimed that he was entitled to notice before this property and property rights could be legally taken away.

The Supreme Court on all claims decided against Lane, and on page 694 of the 70th Connecticut, Judge Torrance stated the law to be as follows: "In our own State it is elementary law: (1) that, subject to the limitations of the Federal Constitution, the State has the jus publicum, or right of governing its shores and navigable waters for the protection of public rights, and also the jus privatum, or title to the soil itself below high-water mark, in trust for the public use and benefit; (2) that the littoral proprietor owns in fee only to high-water mark, but that he has, in the shore in front of his upland, certain exclusive advantages called in our reports rights, privileges, and franchises, among which is the right of access to actually navigable water by wharfing out; (3) that the right or privilege of wharfing out, certainly so far at least as it has not been actually exercised, is held subordinate and subservient to the public right of navigation.

"These statements of the law are supported by the dicta and decisions of this court in all the cases upon this subject, from that of East Haven vs. Hemingway, in the 7th Conn., down to that of Prior vs. Swartz, in the 62d Conn.

"This power to protect the dominant right, includes not only the power to keep the navigable waters free from encroachments and obstructions, but also to improve the navigability of those waters by deepening, straightening or widening old channels, or digging new channels, or otherwise, anywhere below high-water mark, certainly as against the unexercised right to wharf out."

This case settles for this State this question that so far as the right of the upland owner to wharf out to the channel has not been exercised, is concerned, the State can establish a harbor line in the bona-fide interests of navigation without compensating the upland proprietor, for the reasons already stated that the owner of the upland holds his right to wharf out, subject to the dominant and paramount rights of navigation; and on page 698 of said 70th Connecticut, Judge Torrance states this, as follows: "The unexercised right to wharf out he also held subject and subordinate to the dominant right in the United States or the State, or both, to improve the navigability of the waters here. The mere existence of a right to wharf out does not preclude the exercise of the dominant right; and if, in the legitimate exercise of that dominant right, the advantages and privileges of the upland proprietor in or over the flats are diminished or even destroyed, it is damnum absque injuria. HE HELD HIS RIGHTS SUBJECT TO JUST SUCH A CONTINGENCY. Gibson vs. United States, supra. In this view of the case, NO PROPERTY OF THE APPELLANT WAS TAKEN AND NO RIGHTS OF HIS WERE INVADED, by the mere digging of the new channel. It follows from this, that he was not, as claimed by him, entitled to notice and hearing before the Secretary of War and the commissioners, before the permits to dig the new channel were issued."

Now, in reference to the case of Farist Steel Company vs. City of Bridgeport, in 60 Conn. page 278, which you have asked me to explain. It would seem to me that this case is hardly in point, and that if it were claimed to be in point, it would be overruled by the decision in the Lane case, just cited, which was decided 7 years after the Farist Steel Company case.

In the Farist Steel Company case, the city of Bridgeport had constructed a bridge and desired to preserve, unobstructed, the view to said bridge, and to accomplish this purpose, as stated by the resolution of the Common Council, the city established a harbor line.

The distinction of note here is that the court found that the city of Bridgeport had not established this harbor line in the interests of navigation and therefore this paramount right of navigation had not been bona fide.

(Continued on Page 4.)

ELOPED WITH HER FATHER'S BAKER

Philomena Canecchi Leaves Her Husband and Two Children to Cast in Her Lot With Young Lothario.

An elopement on Lexington avenue has raised a flutter of excitement in the Italian colony there. The woman in the case is Mrs. Philomena Canecchi, daughter of Rosario Canecchi, who operates a bakery at number 90. The Lothario of the case is a young baker named Vincenza Velotti, who was employed by the elder Canecchi in his bakery shop. Mrs. Canecchi leaves her husband, James Canecchi, who is also her cousin, and two little children. The

ALDERMEN REQUEST TAX BOARD

To Appropriate no Money for Twenty Year Water Contract.

RESOLUTION IS ADOPTED BY UNANIMOUS VOTE

Way is Paved for Extinction of Twenty-year Contract — The Water Company Can Be Taxed at Full Value and Is- sue of Free Water Can Be Tried Out.

The Board of Aldermen by a unanimous vote last night put itself on record as being against the continuation of the obnoxious 20 year water contract and voting to request the board of Apportionment to refrain from appropriating the \$12,000 the city has paid the last two years to the Bridgeport Hydraulic Co., for the privilege of connecting its hydrants with the mains of the company.

Whether any water is drawn from the hydrants or not the water company collects at the rate of \$12.50 a year for each hydrant.

Last year the appropriation went through the board of Apportionment, although several members were dubious about it and after a committee from the board of Aldermen had waited upon them. The members of the board said the matter was brought to their attention at such short notice that they did not have time to consider it.

This year the matter will go before the tax board at its first meeting this evening.

The matter came before the Common Council in the form of a report from the committee on miscellaneous matters, which was signed by all of the members, and recommended that the board of apportionment "shall not" appropriate the \$12,000 necessary to perpetuate the 20 year water contract. The words "be requested" were substituted for "shall not" on motion of Alderman Wilson.

Alderman Hartley, the only alderman who voted for the 20 year contract who remains in the Common Council, said that he was glad the matter was coming before the Common Council in the form that it was as he wanted to vote for it and felt that he could in that form.

The fight for the adoption of the report was led by Alderman John H. McMurray, who spoke in so convincing a manner that he won the support of the new Aldermen in the council, who were not aware that the city was allowing the Bridgeport Hydraulic Co. exemption from taxation on the bulk of its property and at the same time the city was paying for hydrant connections whether they were used or not. They were also not aware that whenever the Hydraulic Co. wanted to open a main to connect its hydrant with the same freedom as it would if it owned the plugs themselves.

The Aldermen at the start off became a little kinked in their ideas as to the propriety of the report and Alderman Gould said he could not vote for the measure as he did not believe that the Common Council could "resolve" that the Board of Apportionment do anything.

Alderman John N. Near regarded the Board of Aldermen as the mouthpiece of the people. He continued, "Some of the Aldermen in the council were not aware that the city was allowing the Bridgeport Hydraulic Co. exemption from taxation on the bulk of its property and at the same time the city was paying for hydrant connections whether they were used or not. They were also not aware that whenever the Hydraulic Co. wanted to open a main to connect its hydrant with the same freedom as it would if it owned the plugs themselves.

"They agree in the contract to furnish us water as cheap as it is furnished to any other city by a private corporation. But New Haven and other cities get water for municipal purposes free of charge and therefore we are not getting it as cheap as it is furnished to other cities.

"You all know this contract was signed behind closed doors.

"The city attorney has told us that we have not got to continue this contract if we will only stop appropriating this money. I say that at this time, when the city needs all the money it can get that it is a shame to the taxpayers to permit the appropriation of this \$12,000 to continue. I don't see how any man can stand up here and say a word in favor of this proposition. I am a Missourian and I will have to show me why we should pay \$12,000 for water that we are supposed to get for nothing."

Alderman Pringle moved that the report be referred to the Board of Apportionment to direct the Board of Apportionment. He explained that his reason for so doing was that the Common Council had voted an increase in salary to the members of the police department and the Board of Apportionment had refused to provide the money.

Alderman McMurray said in part: "The city attorney has given an opinion that the city of Bridgeport cannot make contracts for more than one year. It has been decided by the Supreme Court in the garbage collection contract case that the city could not make a contract for more than one year. I don't think the question here to-night is concerning the relative rights of this board and the Board of Apportionment, but it is a question of how the members of this council stand on this water question. We all know that the Nathaniel Green charter is not being lived up to. We have the power to remove the Board

of Apportionment for cause. We are an elective body and they are an appointive body and therefore as the direct representatives of the people we have the power to remove them. We don't need the opinion of a lawyer to learn that.

"We all know the Board of Apportionment cannot appropriate money unless it is asked for by the Board of Aldermen or one of its co-ordinate boards. So their real purpose of existing is to curb expenses and not to waste them. When this Common Council which made the 20 year water contract says that it no longer wants to pay this outrageous charge of \$12,000 for using hydrants the city buys and sets itself, the Board of Apportionment should pay some attention to the wishes of this elective body. Last year they said they did not have proper notification. This time they have ample time to consider the matter.

"There is another bad feature of this contract which every citizen of the city should give attention to and that is the section which says that the Bridgeport Hydraulic Co. shall pay taxes on a limited valuation. Why should this company be exempt of paying its just dues?

"This is a question whether the city under the laws of the state has the right to enter into such an unfair proposition. How can you fairly expect the Singer Mfg. Co., or the Union Metallic Cartridge Co., and the other manufacturing corporations have got to go out in the open market and meet competition, while this water company has a single competitor. It has the whole field itself.

"Read the city attorney's report upon this question. It will show you plainly that at the time the city made the 20 year contract it relinquished its rights under the charter. With this contract out of the way the city will get what really belongs to it. At this time we should wake up and take what belongs to the city. We should take the rights of the people in our hands and let the Board of Apportionment follow our example.

Alderman Wilson next moved that the words "be requested" be inserted in the committee's report so that the Board of Apportionment would not be bound to continue the contract. This was done and the Council adopted the resolution by unanimous vote.

FAIRFIELD COUNTY CAUCUS TOMORROW

Successor to Judge Meade as County Commissioner Will Be Chosen.

Judge Meade of Greenwich and C. Annis Lounsbury of Darien the Candidates —Claims of Both Sides.

Hartford, Feb. 2.—After the adjournment of the General Assembly to-morrow the Fairfield county caucus for the selection of a county commissioner to succeed Judge Meade of Greenwich for a term of three years from July 1, next. There are two candidates before the caucus, Judge Meade to succeed himself and C. Annis Lounsbury of Darien. Representative Williamson of Darien is making a canvass for votes for Lounsbury and claims that he will get the caucus. Lounsbury's friends claim he will have some support from Bridgeport and that he stands a good chance for election.

Judge Meade's friends on the contrary are giving assurances that there is nothing to it but Meade and that Lounsbury will get only five or six votes. The caucus will be held at the Hotel Hamilton, where Lounsbury is a son of former Senator Lounsbury of Darien.

John W. French of Trumbull, representative-elect, has been absent since the opening of the session, appeared in the House for the first time to-day and was sworn in as a member.

Thought Washington Still President

In the Superior court this morning Judge Gager passed on a large number of petitions for naturalization which were heard by United States District Attorney William H. Lewis. Mr. Lewis was in a great hurry and disposed of all the cases that came before him in record time. He wished to get to the "train" for Boston where he had to appear in a case in the Hub.

The applicants were of more than usual intelligence, compared to some that have made application formerly. One of the applicants that was rejected claimed George Washington was the present President. Henry Hunziker answered his questions in a straightforward manner. When asked what Tat was, he replied "A Republican," but when questioned who was Bryan he replied "A dead one."

The following were admitted to citizenship—Soren Peter Jensen, of East Portchester, born in Denmark; Marijos Demirdjian, of Stamford, born in Canada; Lorenzo Di Napoli, of this city, born in Italy; Joseph August Wunder of this city, born in Russia; Steven Beltesky of this city, born in Hungary; John William Led-bet, of this city, born in Germany; Vincenzo Cristiano, of this city, a native of Italy; Michael Knapp, of this city, born in Austria; George Herbert, of this city, a native of England; Charles Berthold Victor Wenk, of this city, a native of Germany; Joseph Tomasko, of this city, a native of Hungary; John Charles Riordan, of Stamford, a native of Ireland; Gamattista Lariccia, of Danbury, a native of Italy; Arthur Thomas Blaber, of Sound Beach, a native of England; Otto Berts of Fairfield, a native of Germany; Robert Wilson of Fairfield, a native of Ireland; Henry Edward Blackurst of this city, a native of England; and Antonio Okonski, of Stamford, a native of Austria.

ALDERMEN HALT CHARTER CHANGES FOR PRINTING

Wouldn't be Rushed into Action on Charter Tinkering Scheme.

Morrissey Presents Minority Report, Endorsed by City Attorney Cullinan, Against the Passage of Any Changes Without Submission to the People—Special Meeting Called for Monday.

The charter tinkering program which hitherto has proceeded like a village out-cut sliding down a greased pole, found the track sanded in the Common Council, last night. The aldermen, calmly, coldly and unkindly refused to endorse the resolutions, changes, new offices and new salaries presented in the stock of paper that came in from the charter revision committee, without being granted at least time to read the stuff through.

Even when the mayor stubbornly reiterated his now familiar war cry, "I will take them to Hartford no matter what you do," there was no relenting.

Alderman Wilson urged that the amendments were so unimportant, so innocent, that they should be passed. It was, that it would be a mere waste of time to bother with them. The aldermanic breath would be wasted upon things light as thistle down. The duty was to assent. The further duty was

for the Council to conduct itself lowly and reverently before those whom an insurmountable providence had placed in authority over them. This was about the sense of it.

Alderman McMurray was most impolite and intrusive. The more frequently he was reminded of his duty to be cool and obedient, the oftener he insisted upon knowing what he was going to vote upon.

An overwhelming majority being evidently of the same mind, the amendments were put over for printing. They will be considered at an adjourned meeting, which will be held Monday.

The attitude of the aldermen in favor of taking time was hastened by the minority report, submitted by Former President of the Council Morrissey, in which he took the ground, City Attorney Cullinan and Alderman Tamm, assenting, that no charter amendments should be determined, without means attached for their submission to the voters.

(Continued on page three.)

HOLZER ASKS FOR \$10,000 FOR HOSPITAL

This Sum in Addition to Amount Usually Approp- riated by the State.

Measure to Pension School Teachers

Introduced in Senate

Teachers Are Divided Into Three Classes, First to Re- ceive \$200, Second \$400, and Third \$500—Resolu- tion Contemplates In- quiry Into Effect of Atti- tude of Law Makers of Massachusetts Toward New Haven Road.

(From Our Special Staff Corres.)

Hartford, Feb. 2.—Senator Holzer of Bridgeport to-day introduced a resolution making an additional appropriation of \$10,000 for the Bridgeport Hospital for the two years ending Sept. 30, 1911, this sum to be in addition to any other appropriation made for that institution by the present General Assembly. Referred to Committee on Appropriations.

Senator Holzer also introduced by request an act providing for the pensioning of school teachers in which many of the teachers of the city of Bridgeport are much interested. It provides that any public school or normal school teacher who has taught for not less than 20 years, the last 10 years of which must have been in the state of Connecticut, shall be entitled to a pension.

For the purpose of pensioning the teachers are divided into three classes: Those who are earning from \$500 to \$1,000 per year shall be entitled to a pension of \$200; those earning \$1,000 per year shall be entitled to a pension of \$400; and those earning in excess of \$1,000 per year shall be entitled to a pension of \$500. The matter is subject to the state board of education. A resolution was introduced in the Senate this morning through which the state of Connecticut will assert its right in the matter of the control of the New York, New Haven & Hartford Railroad with which the Massachusetts general court has concerned itself so largely of late. The resolution reads as follows: "The joint committee on judiciary is hereby directed to inquire whether there is any danger of such action by any other state as will encroach upon the sphere of the constitutional authority of this state over its own railroad corporations and over railroads located within its territory, and if so, to recommend such legislation as may seem to be required for the purpose of preserving intact the just jurisdiction of this state over its internal affairs."

Senator Flavel S. Luther, president of the Trinity College and chairman of the special legislative committee appointed to investigate the school system to-day delivered the report of that body to the Senate which convened at 11:20.

The governor sent in the names of Edward Gager of West Haven and E. Harris Weaver and Frank C. Bushnell of New Haven for New Haven bridge commissioners. A resolution appointing E. Herbert Cortis of Windham (Williamite), to succeed himself as Commissioner of the county of that name was passed by the Senate. This already has been passed by the House.

The judiciary committee reported favorably on the nomination of Charles D. Waller of New London to succeed himself as Judge of the New London court of Common Pleas which was passed without dissent.

An act appropriating \$2,500 for the

Connecticut Girl's Industrial School at Middletown, the need for applying to boring an artesian well and installing a modern water and steam plant, was introduced.

Among other measures introduced in the Senate were: An act making regular state appropriation of \$10,000 for the Bridgeport General Hospital, and a resolution authorizing the city of New Haven to issue \$200,000 worth of 4 per cent. improvement bonds for 25 years, the proceeds to apply to parks, school-buildings, an incinerating plant and new bridges.

In the House to-day Representative Bartlett of Bridgeport introduced an act amending the charter of the Connecticut Baptist Association, rectifying an error and giving the association permission to receive and hold any bequests which may be left to it.

(Special from United Press.)
Mendham, N. J., Feb. 2.—Olmore keeps, the actor and journalist, shot himself today while in his bedroom in Phoenix Hotel here. He died an hour after the shooting.

(UNCLASSIFIED.)

WANTED.—Girl to help in kitchen and pantry. 867 Park avenue. B 2 b p

WANTED.—Good competent girl for general household in small family. Good wages. 173 Cottage St. B 2 c o

TO RENT.—6 rooms, second floor, large attic. Gas in kitchen. \$11.00. 125 Lindley St. a p

FISH STORE FOR SALE.—Doing good business. 649 Newfield Ave. B 3 d p

HELP WANTED.—First class braiser also close plater. Apply Locomobile Co. of America. B 2 b o

FOR SALE.—\$500 upright piano, fine shape, good tone, full octave. Bargain at \$145. The M. Steinert & Sons Co., 915 Main St. B 2 a o

MADAM CARLYN, the great English Clairvoyant and Palmist, tells all you wish to know. Can be consulted at 947 Broad St. B 2 a p

FOR SALE.—Elegant upright piano, latest style, powerful tone, big bargain, only one case. The M. Steinert & Sons Co., 915 Main St. B 2 a o

FOR SALE.—Gable upright piano, fine shape, good tone, full octave. Bargain at \$145. The M. Steinert & Sons Co., 915 Main St. B 2 a o

DESK ROOM to rent in centrally located office building. Address: Post-office Box 157, City. A 30 d o

MONEY TO LOAN.—If you need a little money I will lend it to you. Address P. O. Box 495. A 21 t o

TO RENT.—Desirable 4 room flats with improvements. East End. Very low rent. One month free. Inquire at M. Wittstein's jewelry store, 1169 Main St. A 27 d o p

WANTED.—Experienced help on one needle gore making also two needle lap sewing, steady work, high wages. Apply at once, Birdseye Somers Co. A 27 d o

CARD READER.—Advice on all affairs, 25c. Mrs. Levy, 674 Madison Ave., 4th house above North Ave. G 6 t t

DR. WALTERS, DENTIST, 1062 Main St. Office hours from 8 a. m. to 8:30 p. m. Sundays 9 a. m. to 12 p. m. P 23 o

WANTED.—Men to peddle graded horse radish, big profits. Come and see us. Wunder's Delicatessen Store, 1273 Main St. A 30 s p

CASCA LAXINE tablets, the thing for constipation and stomach troubles. G 1 a o

OLD HOMESTEAD CAFE, hot and cold lunch all day. Look in, corner E. Main and Walter Sts. M. O'Connor, Prop. A 19 t o

FOR SALE.—High grade upright piano, cheap. Square piano, 50 c a week. 12 Piano Boxes, good for ash box or chicken coops. 844 Noble Ave. S 24 t 2 4 o

NOW IS THE TIME to cover your pipes, boilers and furnaces and save the cost in coal in one winter. Open evenings 7 to 9 o'clock. Tel. 2397. John F. Walsh, 114 Kosuth St. T 5 a 2 4 o